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3
UNITED STATES DISTRICT COURT
4
FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 TAMARAH R. SEIELSTAD, individually
7 and on behalf of all others similarly
8 situated,

9 Plaintiff,
10 v.
11 AEGIS SENIOR COMMUNITIES, LLC, a
Washington Limited Liability Company
12 Defendant.

No. CV 09-1797 MMC

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS AND COLLECTIVE
ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS, APPROVING
FORM OF NOTICE, AND SCHEDULING
A FAIRNESS HEARING**

Judge: Hon. Maxine M. Chesney
Room: 7, 19th Floor

Action Filed: April 24, 2009

15 KENNYON MORRIS and KAREN
16 JIRON, individually and on behalf of all
other similarly situated,

17 Plaintiffs
18 v.
19 AEGIS SENIOR COMMUNITIES, LLC, a
Washington Limited Liability Company,
20 Defendant.

No. CV 10-2060 MMC

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS AND COLLECTIVE
ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS, APPROVING
FORM OF NOTICE, AND SCHEDULING
A FAIRNESS HEARING**

Judge: Hon. Maxine M. Chesney
Room: 7, 19th Floor

Action Filed: May 14, 2010

24 On March 4, 2011, the Class Representatives, on behalf of themselves and the classes they
25 represent, applied to the Court for Preliminary Approval of the Joint Stipulation and Settlement
26 Agreement and Release of Claims (“Settlement Agreement”) in this Action, for preliminary
27 certification of the classes defined in the Settlement Agreement, for approval of the form of
28

1 Notice, and for the scheduling of a hearing on these and other matters ("Fairness Hearing").
 2

3 The Court, having read and considered the proposed Settlement Agreement, the proposed
 4 Notice to Class of Proposed Settlement of Collective and Class Action and proposed methods of
 5 notification, and having reviewed the moving papers, and good cause appearing to the satisfaction
 6 of the Court, finds as follows:
 7

8 1. The proposed Settlement Agreement falls within the range of possible final
 9 approval as fair, adequate, and reasonable to the class and merits submission to the class for
 10 consideration pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.
 11

12 2. The proposed form of mailed Notice is adequate and constitutes the best notice
 13 practicable of the Fairness Hearing, the proposed settlement, the attorneys' fees and expenses,
 14 and other matters set forth in the Notice to Class of Proposed Settlement of Collective and Class
 15 Action, and constitutes valid, due and sufficient notice to all persons in the proposed Class, and
 16 comply fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the
 17 Constitution of the United States, and any other applicable law; and based upon the foregoing.
 18

19 **IT IS HEREBY ORDERED** that

20 3. For the purpose of implementing and enforcing the proposed Settlement
 21 Agreement, pursuant to Rules 23(b)(3) and (e) of the Federal Rules of Civil Procedure, the
 22 following Classes are conditionally certified:
 23

24 (a) Settlement **Class A** will be comprised of all current and former non-
 25 exempt, hourly paid California employees of Defendant performing care-manager duties in the
 26 position of lead care manager, care manger, medical care manager, and medical technician from
 27 April 24, 2005, to and including the date on which the Court gives preliminary approval of the
 28 Settlement.

29 (b) Settlement **Class B** will be comprised of all former California employees
 30 of Defendant who were terminated from Defendant's employment between the time period
 31 April 24, 2005, to and including the date on which the Court gives preliminary approval of the
 32 Settlement.
 33

4. The third claims for relief in the *Morris* and *Seielstad* Complaints are dismissed against Defendant, with respect to any claims from employees of Defendant working in the State of Nevada and the State of Washington.

to Class of Proposed Settlement of Collective and
5. The proposed ~~form~~ of Notice of Class and Collective Action Settlement in the
Class Action in the form attached hereto
~~form attached to the Zelenski Declaration of April 13, 2011~~, is approved for mailing to the Class
Members.

Consent to Join/Opt-In/Claim Form

6. The proposed ~~form of Claim Form~~ in the form attached to the Zelenski Declaration of April 13, 2011, is approved for mailing to the Class Members.

7. The law firm of Harris and Ruble and the North Bay Law Offices of David Harris are conditionally certified as Class Counsel.

8. Named Plaintiffs Tamarah Seielstad, Kennyon Morris and Karen Jiron are conditionally certified as Representative Plaintiffs.

9. A Fairness Hearing shall be held before this Court at 9 a.m. on the 30th day of September, 2011, at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 19th Floor, Courtroom 7, San Francisco, California 94102. At the Fairness Hearing, the Court will determine: (a) whether the proposed Settlement Agreement should be finally approved as fair, reasonable and adequate to the Class; (b) whether a Final Order and Judgment should be entered thereon; (c) whether Class Counsel's attorneys' fees and costs should be approved; and (d) whether the proposed Plan of Allocation should be approved.

10. No later than on May 31, 2011, Class Counsel shall file an application for an award of attorneys' fees and incentive payments for Plaintiffs, as well as for reimbursement of costs (the "Application"). Contemporaneously with its filing, but in no event later than May 31, 2011, the Application shall be posted on a web site established by the Claims Administrator, Gilardi & Co., LLC.

11. By May 31, 2011, Class Counsel shall cause the Claims Administrator to mail the Notice to Class of Proposed Settlement of Collective and Class Action and the Claim Form to those persons in the Settlement Class who can be identified through reasonable effort, by First

1 Class Mail and shall arrange to have the Administrator cause to be filed with the Clerk of this
2 Court a declaration that the mailing has been made in accordance with this Order.
3

4 12. No later than on September 16, 2011, Class Counsel shall file a Motion for Final
Approval, which Motion shall address any and all objections.
5

6 Any person who objects to the Settlement of the Class Action may appear and be heard at
7 the Fairness Hearing. Any such person must file a written notice of intention to object, file copies
8 of any evidence, briefs or other papers in support of the objection with the Clerk of the Court and
9 serve such notice of their intention to object and copies of all supporting papers within the
manner and time set forth in the Class Notice.
10

11 13. Only persons who have filed and served valid and timely notices of objection shall
be entitled to be heard at the Fairness Hearing. An objector may appear personally or by counsel.
12

13 14. Any Class Member who wishes to participate in the Settlement Fund must sign
and return a valid and timely Claim Form, in accordance with the instructions contained therein.
14 Any Class Member who does not submit a valid and timely Claim Form shall not be entitled to
15 participate in the Settlement Fund. Any Class Member, whether or not the Member submits a
16 Claim Form, and who does not opt out, shall be barred and forever enjoined from asserting any of
17 the Released Claims, as described in Paragraph 17 of the Settlement Agreement, against
18 Defendant, shall conclusively be deemed to have released any and all such Released Claims as
19 against Defendant, save and except for claims under the Fair Labor Standards Act, and shall be
20 subject to and bound by the provisions of the Settlement Agreement and Final Judgment, if the
21 Court ultimately approves the Settlement Agreement.
22

23 15. The Court may, for good cause, extend any of the deadlines set forth in this Order
or adjourn or continue the Fairness Hearing without further notice to the Class.
24

25 16. Pending final determination of whether the settlement set forth in the proposed
Settlement Agreement is to be approved, the Class, either directly, representatively derivatively,
26 or in any other capacity, shall not commence or prosecute any action or proceeding in any court
27 or tribunal asserting any of the Released Claims against Defendant or the Releasees.
28

17. If for any reason the proposed Settlement Agreement is terminated by its terms, or Final Approval does not occur, this Order conditionally certifying the Classes shall automatically be vacated.

IT IS SO ORDERED:

DATED: April 15, 2011


THE HONORABLE MAXINE M. CHESNEY
United States District Court Judge